

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-008323

FILED: _____

ERNESTO RASCON, et al.

ROLAND ARROYO

v.

NORTHWEST JUSTICE COURT, et al.

RACHELLE Z LEIBSOHN

CARLOS GARCIA
DBA VIVA CHECK CASHING INC
330 W GILBERT RD
MESA AZ 85204
DENISE M HOLLIDAY
PHX JUSTICE CT-NW

MINUTE ENTRY - SPECIAL ACTION

This Court has jurisdiction over Special Actions pursuant to the Arizona Constitution Article VI, Section 18. This case and CV 2002-010496 are not consolidated for any purpose. This case is a Special Action filed by Petitioner, Ernesto Rascon, requesting relief from the Northwest Justice Court's (the Respondent court) order dismissing Rascon's amended answer and counterclaim. The second case, CV 2002-010496, is a civil appeal commenced by Appellant, Ernesto Rascon, following judgment at the conclusion of the trial at the Northwest Justice Court. The Northwest Justice Court granted judgment to Appellee, Viva Check Cashing, Inc.

FACTS

This case commenced in the Northwest Justice Court when the Real Party in Interest, Viva Check Cashing, Inc., filed a complaint seeking declaratory judgment relief from Petitioner's actions. Viva Check Cashing, Inc. contented that Appellant's had violated a valid

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commercial lease. Petitioner Rascon filed an amended answer and counterclaim over 14 months after the original complaint was filed, and less than a month prior to the scheduled trial date (the trial date had been scheduled in March). The trial court granted Viva Check Cashing, Inc.'s Motion to Strike the Amended Answer and Counterclaim, which were clearly not timely.

SPECIAL ACTION

Special Action jurisdiction is discretionary, and should not be exercised where the Petitioner has an equally speedy and adequate remedy by appeal. Clearly, Petitioner Rascon has an entirely adequate and speedy remedy by appeal; however, Petitioner Rascon failed to raise this issue in his direct appeal. Appellant's counsel's claim that it was not raised on appeal because it was raised in a discretionary action is grossly misplaced. To preserve an issue for appeal, the matter must be raised in appellate memorandum. This Court determines on the merits of the issue presented in this Special Action, that the trial court did not err in dismissing Petitioner's counterclaim and striking the amended answer filed less than a month prior to the trial date.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT